



**THE KERRIGAN CASE.**

A full report of the Kerrigan-McNamara case appeared in our local columns yesterday morning.

The suit has excited unusual public interest, and we are glad that the matter has been finally disposed of.

The evidence, as is usual in such cases, was very conflicting, but the decision of Judge Watts, remanding the children to their parents, is almost universally approved, and is in full accord with public sentiment.

We believe his Honor did right. The indentures ought to have been canceled because, in our opinion, there was no desertion in the case, either in reality or in contemplation of the law.

Patrick Kerrigan, who, in his capacity as umbrella mender, travels around the country, is addicted to drinking. He frequently absents himself from his home in this city, and while away sends his wife money earned in his business, to support her and his four children. About four weeks ago Mrs. Kerrigan received a letter from her husband in Wilmington, informing her that he was very ill, and she immediately hastened to his bedside. She left provisions for her children and employed a woman to take charge of them until her return—expecting, as she says in her testimony, to be absent but a short time. Finding her husband too sick to leave him, she was detained longer than she anticipated.

In the meantime, Father McNamara was informed by the individual who had been left in charge of the children, a Mrs. Johnson, who was proved to be irresponsible and untruthful, that she believed Mrs. Kerrigan had abandoned the children. She asked the Priest to take charge of them, as she was unable to keep them. He declined to do so at first, but on his next visit, Mrs. Johnson threw them at his feet, as he says in his testimony, declaring that she could no longer attend them. He then took them before the Probate Judge, who after hearing a full statement of their destitute and helpless condition, and believing that they were abandoned by their parents, bound them to Father McNamara on the same day the application was made. The Probate Judge did not deem it necessary to issue any summons or notice in the case, relying upon the rumors that the parents had left the country, and that their children were thrown upon the county as paupers.

The mother returned to the city, and was greatly distressed when she heard that her children had been taken from her. She applied to the Priest, who informed her that she could not get them except by law. She therefore applied to the Probate Judge for a rehearing of the case. In the meantime, both parties employed counsel, who by consent agreed to test the legality and propriety of the proceedings before the Superior Court Judge of the District.

On the trial it was found that both parents were dissipated, especially Kerrigan, but that their children did not suffer for the necessities of life. Kerrigan and his wife, the former as umbrella mender, and the latter as lace pedlar, earned a livelihood and support, and their credit with merchants with whom they dealt was very good. Mrs. Kerrigan alone, without the assistance of her husband, made money enough to take care of the children. But their associations are of the lowest order, and the children are surrounded by the most corrupting and degrading influences. Notwithstanding the degradation of the parents and their evil examples, their situation elicited strong popular feeling in their favor. The public believed that the children of right belonged to the father and mother, and that they could not be justly taken from them by the law. This feeling had become very intense in the community, and when the decision of the Judge was rendered, canceling the indentures, there was hearty rejoicing among the bystanders in the Court room, which found utterance in continued applause.

We think it was clearly the duty of Father McNamara, when the mother returned to the city, to have gone himself before the Probate Judge, and asked him to cancel the indentures. The indentures had been granted under the impression that the children had been deserted. But when the parents returned, that was evidence conclusive that the Probate Judge had acted on a mistake of facts. There was no abandonment and no purpose of abandonment. The Priest, through his counsel, stated that he did not want the children—that they were a burden to him—that his object was to correct and reform the parents—that he did not oppose the cancellation of the indentures—but merely desired that the children be placed under proper influences, and not again committed to the custody of their unnatural and drunken parents.

The laws of our land do not recognize any such doctrine as this. No doubt the Orphan Asylums of the land are in every way better suited for the nurture, support and mental and moral training of the young than thousands of homes—the abodes of vice and poverty; but the law does not step in be-

tween the parent and the child and sever the tie of nature planted by an All-wise God in the human heart, because forsooth that parent may be an unworthy or even degraded member of society.

The Kerrigan children are not orphans, nor have they been abandoned by their parents. It is a sad thing that those parents are dissipated, but they are nevertheless the lawful and natural guardians of their children, whom they are physically able to take care of; and the law does not step in and say to them: Because you are degraded, your children shall be taken from you and given to the Priest.

**JOHNSON AND CUSHING—“DISHONEST AND DISRESPECTABLE.”**

Hon. Reverdy Johnson and Hon. Caleb Cushing have national reputations as able lawyers. These gentlemen have been employed by the holders of North Carolina bonds to bring suit for the recovery of the interest that may be due on the bonds. Before commencing the suits, Mr. Johnson, at the recent meeting in New York, informed the bondholders that he would undertake the suit for five thousand dollars cash as a retainer, and twenty thousand more to be paid when the suit was decided. At the same meeting the written opinion of Mr. Cushing was read, which had been prepared at the time he was first consulted in the Swasey suit.

The opinions of Messrs. Johnson and Cushing both assume that the bonds are regular and constitutional, and from that stand-point their conclusions of law are drawn.

They make no reference to the views that will be urged against the payment of the interest on the bonds. The strong points of the case are not touched upon at all. The bondholders purchased with a full knowledge of the character of the bonds, and bought them for a mere song.

Mr. Johnson says:

“It would be very dishonest and disreputable in North Carolina to disregard her plighted faith and honesty.”

North Carolina will not repudiate her honest debt. She will not disregard her plighted faith and honesty. But she will never consent to pay an illegal and fraudulent debt, concocted by swindlers and embezzlers, and for which she has never received one farthing of benefit. She will fight to the bitter end all attempts made to collect the interest on the tainted bonds, issued at the dictation of Littlefield and Swepson, which were squandered by the million and fell into the hands of speculators and Shylocks in New York and Canada.

Many of these bonds were issued contrary to law. They were pronounced

been decided by the Supreme Court of North Carolina unconstitutional and worthless. They were bought up at a nominal price by Northern capitalists who were fully cognizant of their character. And yet we are told by the Hon. Reverdy Johnson that it will be dishonest and disreputable for North Carolina to refuse to acknowledge her obligations to pay this fraudulent debt!

We quoted yesterday the amendment to the Constitution of the United States, prohibiting any individuals either in law or equity, from commencing or prosecuting any suit in the Federal Court against any State of the American Union. Mr. Johnson proposes to evade this prohibition, by a *mandamus*, not against the State of North Carolina, but the Treasurer of the State—thus in effect making the constitutional prohibition a dead letter.

The Richmond *Dispatch* of yesterday publishes the following article on this subject, which is credited to the Chronicle of Augusta, Ga.:

“Can a State be sued? This question is one of the greatest importance just at present to the Southern States, in view of the fact that many of them have failed to meet the principal and interest of their bonds, and the holders are seeking a remedy for the collection of their debt. The question, notwithstanding its importance, is not a new one, but was often raised in the past and often decided. It was one of the first issues which agitated the country after the formation of the Federal Union and the adoption of the Federal Constitution. Soon after the system of a General Government went into operation, our own State, Georgia, was sued in an United States Court by Chisolm, a non-resident. The State, relying upon her sovereignty as a protection against suits, declined to defend and contented herself with instructing counsel to protest against the Supreme Court exercising jurisdiction. The court, after considering the question, decided unanimously that under the Constitution a State could be sued.

This decision, though apparently sustained by the law, gave great dissatisfaction to the friends and advocates of States’ rights and State sovereignty, who were shocked at the idea of bringing a State into a tribunal like an ordinary plaintiff or defendant. As soon as possible an amendment was made to the Constitution which provided that the judicial power of the Government “should not extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.” This seemed to be conclusive, and the theory that a State could be reached by any process of the courts was generally abandoned until a case came up from Ohio, the decision upon which tended to show that the amendment could be evaded if it could not be successfully assailed in an open attack. In this case, the State of Ohio levied a tax of \$50,000 upon a branch of the United States Bank established within her borders. The bank refused to pay, and upon the State’s proceeding to collect

the amount in a summary manner, filed a bill in the United States Circuit Court against, not the State of Ohio, but Osborne, the Auditor of the State. The State objected that the proceeding was within the prohibition of the 11th amendment to the Constitution. But the Supreme Court of the United States (Osborne v. United States Bank, 9 Wheaton,) held that the amendment applied only to a case where the State is a party to the record, and it did not apply to the case at bar because the suit was not against Ohio, but against the State Auditor.

The full force of this decision, which allowed the amendment to be so easily evaded, does not appear to have been appreciated prior to the war. Since the war, and with the issuance of enormous amounts of bonds by the carpet-bag Legislatures of the South—amounts so enormous that they can only be liquidated by taxation onerous and grinding—the question has again become prominent. With the failure of North and South Carolina, and other States South of the Potomac, to meet the interest upon their bonds issued for railroads and other works of public improvement, this decision in 9 Wheaton has received closer attention and more careful consideration.

Mr. Johnson believes that the remedy of the bondholders is simple and complete. He thinks that all the creditors have to do is to apply to the Circuit Court of the United States for the State of North Carolina for a *mandamus*—not against the State, but against the Comptroller-General or other proper official, requiring him to levy a tax with which to pay the interest. He pronounces the legislation of North Carolina on these bonds, enacted subsequent to their sale and negotiation, to be an impairment of the original contract, and consequently unconstitutional, null and void. Mr. Johnson in his opinion—which anchor compels us to say is both able and elaborate—takes the position that by the current of its decisions the Supreme Court of the United States is pledged to place a most liberal construction on the eleventh amendment to the Constitution, and that where a State is not expressly made a party to the record, jurisdiction of the case will be assumed. In other words, if the bondholders should bring their suit against North Carolina, it will not be allowed to proceed, but if they bring suit against John Doe, the Comptroller General, their action will be sustained. If this opinion be correct, and the decision in the case from Ohio seems to warrant its soundness, the constitutional provision prohibiting suits against States becomes a nullity. A nominal change of name in the party defendant would, in effect, bring any State in the Union into an United States Court, and bind it by the decision which might be rendered. By parity or reasoning a past due bond can be collected with the same machinery used in the collection of past due coupons. According to Mr. Johnson’s theory, if the State of Georgia should fail to pay a bond at maturity, the holder of the obligation would only have to apply to the Circuit Court in Savannah for a *mandamus*, directed to W. S. Goldsmith, Comptroller-General, requiring him to levy a tax for the payment of the debt. The South will await with much anxiety the decision upon this test case from North Carolina.”

**NEW ADVERTISEMENTS.**

J. MC CORKLE. WM. H. BAILEY.

**M**ATTOCKS & BAILEY,

**ATTORNEYS & COUNSELLORS,**

SALISBURY, N. C.

Practice in Rowan, Mecklenburg, Cabarrus, Davie, Davidson, Forsyth, Iredell, Yadkin, Stanly and Montgomery and in the Federal and Supreme Courts.

John W. Manning, Esq., Special Partner.

Daily Sentinel, Salisbury; Watchman, June 26-27.

St. Paul’s, Charlotte; Democrat, New North State, Concord, Sun, and Winston Sentinel copy and forward bill to this office.

**PROCLAMATIONS.**

A PROCLAMATION

BY THE

Governor of North Carolina.

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EXECUTIVE DEPARTMENT,

Raleigh, June 9th, 1873.

Be it known to all whom it may concern: That in conformity with Section 8, chapter 153 of the acts of the General Assembly passed at the session of 1872-73, in relation to amendments of the Constitution of the State, I, Tod R. CALDWELL, Governor of the State of North Carolina, do order so much of the preamble of said act to be done, and the second section of said act to be done, for thirty days preceding the first Thursday day of August, 1873, in the Raleigh “Daily Standard,” and in the “Daily News,” published in Raleigh, and also for the same newspaper, published in the various Congresses of the State, and State to wit: First District—“North Carolinian,” Elizabeth City; “Express,” Washington; Second District—“News,” Goldsboro; Third District—“Statesman,” Fayetteville; “Star,” Wilmington; North State, Greensboro; “Chronicle,” Milton; Sixth District—“Democrat,” Charlotte; “Spirit of the South,” Rockingham; “Daily Democrat,” Danbury; “Advertiser,” Statesville; “Watchman,” Salisbury; Eighth District—“Pioneer” and “Advertiser,” Asheboro.

The preamble of the precease ordered to be published is in the following words, to-wit:

“In the last General Assembly,

(three-fifths of the whole number of members of each House concurring in the bill containing the same having been read three times in each House,) proposed the following alteration in relation to the public debt: alteration in relation to the public works; alteration in relation to the public works; alteration in relation to the census; alteration in relation to the taxation; alteration in relation to the State of the Union; alteration in relation to the sessions of the General Assembly; alteration in relation to the Code of Criminal Law; alteration in relation to the Federal and other offices.”

The second section of the said act ordered to be published is in the following words,

“It shall be the duty of the Sheriffs in each and every county in the State to open polls at the several election precincts in his county on the first Thursday in August next, and the same day to close the same, and to vote for or against the ratification of each of the said amendments, those desiring such amendments to vote with the yeas or printed ticket ‘For’ Amendments, those of a contrary opinion to vote with a white or printed ticket, ‘Against Amendments.’”

The attention of County Commissioners to this section is called, and it is requested which provides that separate ballot boxes shall be furnished for each amendment to be voted upon.

Done at our City of Raleigh, the

15th day of June, A. D. 1873, and in the ninety-seventh year of American Independence.

TOD R. CALDWELL.

By the Governor:

J. R. H. CARMER, Druggist.

No. 11 Fayetteville Street, Raleigh, N. C.

June 10-11.

“The papers named in the foregoing proclamation will publish as therein directed and forward bills to Executive office

and the same will be collected and

paid into the State Treasury.”

Given under my hand,

W. H. BAILEY.

At DAVIS, DRAKE & CO.’S.

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# The Raleigh Daily News.

THURSDAY.

JUNE 26, 1873.

## SELECTED POETRY

### IT NEVER PAYS.

It never pays to fret and growl  
When fortune seems out of the way;  
The better you are the more you stand  
And the more you growl the more you blow.

For luck is work,  
And those who work  
Should not be afraid of the doom;  
But yield the play,  
And clear the way  
That better men have room.

It never pays to wreck the health  
In drudging after gain,  
And he is sold who thinks that gold  
Is cheaper than pain.

A humble lot.

Have temptations even kings;  
That wealth will buy.

Not oft contentment brings.

It never pays a blunt refrain  
Well worthy of a song.  
For age and youth must learn this truth,  
That nothing pays that's wrong.

Alone are sure

To bring prolong success,  
While what is right,  
Is always sure to bless.

### Jefferson Davis' Book.

The Confederate ex-President has been "interviewed" in Memphis, by a writer for the Macon (Ga.) *Register* who says: "It was in 1828 that I first saw this historical man. He had just returned from West Point, and wore the uniform of a cadet. He was then a little, modest youth, whose deep, gray eyes twinkled with the beauty and brilliancy of a star. His head was small, as it is yet, but admirably formed, and there was an intelligence in his features that gave promise of the future he has fulfilled. That eye to-day beams with the steady light of mental illumination rarely met with in one of his years and sorrows. Those features, once so radiant, are now sedate and wearing the cast of deep melancholy, save when animated with the spirit which yet burns in his bosom when excited by thought or conversation. Sometimes, too, the twinkling of mirth dances in his eye and lights up his features. But soon the joyous smile fades into the melancholy, which has become habitual. His health is good. He has but one sound eye. You know the vision of the other has long since faded in darkness. This defect forbids much reading and writing.

Yet to-day, in the familiarity of old friendship, I remarked, I think, Mr. Davis, you will not lose the other eye until you shall have given to the world your views and opinions as to the causes which led to the late war? I am writing,' he said—and he drummed with his finger on the blaze colored table, upon which his arm rested, and the deep sadness which clouded his features, and followed the remark was painful to contemplate. 'You have just returned from a visit to Lamar, and contemplate a visit to Georgia, you tell me. Say to Hardman and Lamer, when you see them, I have a pleasant memory of them both; and, further, tell them I am preparing a work with all the impartiality possible to me, and after years of sober thought, which shall not leave the world in darkness as to my motives and my conduct, or that of those who acted with me.'

### Classes of Occupations.

The New York *World*, in the course of an article on the Census Report, which it is showing up as a Protection dodge on a gigantic scale, gives us the following interesting paragraph. In the classification of population, according to occupations, it is established that in 1870 there were 12,505,923 persons engaged in all classes of occupations. Of these, 5,922,471 were engaged in agriculture, 5,684,793 in professional and personal services, 1,191,288 in trade and transportation, and 2,707,421 in manufactures, mechanical and mining industries.

Very nearly half of those engaged in all varieties of pursuits are farmers, and as these are steadily organizing their Granges throughout the country we may soon expect them to constitute a very formidable power, united on the comprehensive ground of cheap transportation and low taxes. When the tillers of the soil once understand the true meaning of protection, which is but another name for the robbery of the many for the profit of the few, we may expect to see a new face put on our affairs. For our own part, we are particularly anxious to let posterity pay the national debt, and the farmers, when once organized, will agree with us in this plain measure of justice and economy.

### A PROCLAMATION.

By the Governor of North Carolina.

#### EXECUTIVE DEPARTMENT,

Raleigh, June 10th, 1873.

WHEREAS, Official information has been received at this Department that vacancies exist in the Senate branch of the General Assembly of North Carolina, by reason of the resignation of Hon. S. S. B. Resse, representing the Second Senatorial District, and that vacancies exist in the House of Representatives, by the said General Assembly, by reason of the resignation of Alfred J. Morrison, representative from Lincoln County, and Richard C. Bassett, representative from Wayne County.

Now, therefore, I, Tod R. Caldwell, Governor of the State of North Carolina, by virtue of authority invested by law, do hereby call upon the people, including the Sheriff of the counties, composing the Second Senatorial District of North Carolina, to open polls and call an election at the earliest possible moment on THURSDAY, THE SEVENTH DAY OF AUGUST, A. D. 1873, for two Senators; and I do also call upon the people, including the Sheriff of the counties, composing the Second Senatorial District of North Carolina, to open polls and call an election at the earliest possible moment on THURSDAY, THE SEVENTH DAY OF AUGUST, A. D. 1873, for two Representatives, all of said elections to be held, voted, compared and returns made in all respects in accordance with the laws of the State of North Carolina.

Done at our City of Raleigh, the 10th day of June, 1873, and in the ninth year of American Independence.

TOD R. CALDWELL.

By the Governor:

J. B. NEATHERLY,

Private Secretary.

June 14th.

400 BUSHELS OATS & HAY

For sale low to close consignment.

John Stronach.

SHINGLES & SHINGLES.

3,000 White Pine Shingles,

2,000 Cypress Heartshingles,

2,000 Pine Chest.

John Stronach.

PATENT GLOSS STAR CH.

The finest article in the market, put up

50 lb. boxes for family use. Just received

and for sale at

CARMER'S DRUG STORE.

June 17th.

400 Bushels Oats & Hay.

For sale low to close consignment.

John Stronach.

SHINGLES & SHINGLES.

3,000 White Pine Shingles,

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